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Report of the United Nations Commission on International Trade Law on the work of its forty-third session

Report of the Sixth Committee

Rapporteur: Mrs. Glenna **Cabello de Daboin** (Bolivarian Republic of Venezuela)

I. Introduction

1. At its 2nd plenary meeting, on 17 September 2010, the General Assembly, on the recommendation of the General Committee, decided to include in the agenda of its sixty-fifth session the item entitled "Report of the United Nations Commission on International Trade Law on the work of its forty-third session" and to allocate it to the Sixth Committee.

2. The Sixth Committee considered the item at its 7th, 25th and 27th meetings, on 11 and 29 October and on 5 November 2010. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary records (A/C.6/65/SR.7, 25 and 27).

3. For its consideration of the item, the Committee had before it the report of the United Nations Commission on International Trade Law on the work of its forty-third session.[1]

4. At the 7th meeting, on 11 October, the Chair of the United Nations Commission on International Trade Law at its forty-third session introduced the report of the Commission on the work of its forty-third session.

[1] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17).

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II. Consideration of proposals

A. Draft resolution A/C.6/65/L.4

5. At the 25th meeting, on 29 October, the representative of Austria, on behalf of Albania, Argentina, Australia, Austria, Belarus, Belgium, Brazil, Bulgaria, Canada, Chile, China, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Fiji, Finland, France, Germany, Greece, Guatemala, Hungary, India, Ireland, Israel, Italy, Japan, Jordan, Liechtenstein, Luxembourg, Malawi, Malaysia, Malta, Mexico, Montenegro, the Netherlands, New Zealand, Norway, Paraguay, the Philippines, Portugal, the Republic of Korea, Romania, the Russian Federation, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Uganda, Ukraine, the United Kingdom of Great Britain and Northern Ireland and Venezuela (Bolivarian Republic of), subsequently joined by Armenia, Lithuania, Madagascar, Poland and the Republic of Moldova, introduced a draft resolution entitled "Report of the United Nations Commission on International Trade Law on the work of its forty-third session" (A/C.6/65/L.4).

6. At its 27th meeting, on 5 November, the Committee adopted draft resolution A/C.6/65/L.4 without a vote (see para. 13, draft resolution I).

B. Draft resolution A/C.6/65/L.5

7. At the 25th meeting, on 29 October, the representative of Austria, on behalf of the Bureau, introduced a draft resolution entitled "UNCITRAL Arbitration Rules as revised in 2010" (A/C.6/65/L.5).

8. At its 27th meeting, on 5 November, the Committee adopted draft resolution A/C.6/65/L.5 without a vote (see para. 13, draft resolution II).

C. Draft resolution A/C.6/65/L.6

9. At the 25th meeting, on 29 October, the representative of Austria, on behalf of the Bureau, introduced a draft resolution entitled "UNCITRAL Legislative Guide on Secured Transactions: Supplement on Security Rights in Intellectual Property" (A/C.6/65/L.6).

10. At its 27th meeting, on 5 November, the Committee adopted draft resolution A/C.6/65/L.6 without a vote (see para. 13, draft resolution III).

D. Draft resolution A/C.6/65/L.7

11. At the 25th meeting, on 29 October, the representative of Austria, on behalf of the Bureau, introduced a draft resolution entitled "Part three of the UNCITRAL Legislative Guide on Insolvency Law" (A/C.6/65/L.7).

12. At its 27th meeting, on 5 November, the Committee adopted draft resolution A/C.6/65/L.7 without a vote (see para. 13, draft resolution IV).

III. Recommendations of the Sixth Committee

13. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolutions:

Draft resolution I
Report of the United Nations Commission on International Trade Law on the work of its forty-third session

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Reaffirming its belief that the progressive modernization and harmonization of international trade law, in reducing or removing legal obstacles to the flow of international trade, especially those affecting developing countries, would contribute significantly to universal economic cooperation among all States on a basis of equality, equity, common interest and respect for the rule of law, to the elimination of discrimination in international trade and, thereby, to peace, stability and the well-being of all peoples,

Having considered the report of the Commission on the work of its forty-third session,[1]

Reiterating its concern that activities undertaken by other bodies in the field of international trade law without adequate coordination with the Commission might lead to undesirable duplication of efforts and would not be in keeping with the aim of promoting efficiency, consistency and coherence in the unification and harmonization of international trade law,

Reaffirming the mandate of the Commission, as the core legal body within the United Nations system in the field of international trade law, to coordinate legal activities in this field, in particular to avoid duplication of efforts, including among organizations formulating rules of international trade, and to promote efficiency, consistency and coherence in the modernization and harmonization of international trade law, and to continue, through its secretariat, to maintain close cooperation with other international organs and organizations, including regional organizations, active in the field of international trade law,

1. *Takes note* with appreciation of the report of the United Nations Commission on International Trade Law on the work of its forty-third session;[1]

2. *Commends* the Commission for the finalization and adoption of three new international commercial law standards as follows: the UNCITRAL Arbitration Rules as revised in 2010;[2] the UNCITRAL Legislative Guide on Secured

[1] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17).
[2] Ibid., chap. III and annex I.

Transactions: Supplement on Security Rights in Intellectual Property;[3] and part three of the UNCITRAL Legislative Guide on Insolvency Law on the treatment of enterprise groups in insolvency;[4]

3. *Encourages* the Commission to finalize its work on a revision of the UNCITRAL Model Law on Procurement of Goods, Construction and Services[5] at its forty-fourth session, in 2011;

4. *Welcomes* the decision of the Commission to take up new topics in the areas of settlement of commercial disputes, security interests and insolvency law and undertake work in the area of online dispute resolution;

5. *Also welcomes* the decision of the Commission to hold international colloquiums in order to facilitate identification of a road map for future work by the Commission in the area of electronic commerce and in order to explore the legal and regulatory issues surrounding microfinance that fell within the mandate of the Commission;

6. *Further welcomes* the progress made in the ongoing project of the Commission on monitoring the implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958,[6] and requests the Secretariat to pursue its efforts towards the preparation of a draft guide on the enactment of the Convention to promote a uniform interpretation and application of the Convention;

7. *Endorses* the efforts and initiatives of the Commission, as the core legal body within the United Nations system in the field of international trade law, aimed at increasing coordination of, and cooperation on, legal activities of international and regional organizations active in the field of international trade law and at promoting the rule of law at the national and international levels in this field, and in this regard appeals to relevant international and regional organizations to coordinate their legal activities with those of the Commission, to avoid duplication of efforts and to promote efficiency, consistency and coherence in the modernization and harmonization of international trade law;

8. *Reaffirms* the importance, in particular for developing countries, of the work of the Commission concerned with technical cooperation and assistance in the field of international trade law reform and development, and in this connection:

(a) Welcomes the initiatives of the Commission towards expanding, through its secretariat, its technical cooperation and assistance programme, and in that respect encourages the Secretary-General to seek partnerships with State and non-State actors to increase awareness about the work of the Commission and facilitate the effective implementation of legal standards resulting from its work;

(b) Expresses its appreciation to the Commission for carrying out technical cooperation and assistance activities, including at the country, subregional and regional levels, and for providing assistance with legislative drafting in the field of international trade law, and draws the attention of the Secretary-General to the limited resources that are made available in this field;

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[3] Ibid., chap. IV.

[4] Ibid., chap. V.

[5] Ibid., *Forty-ninth Session, Supplement No. 17* and corrigendum (A/49/17 and Corr.1), annex I.

[6] United Nations, *Treaty Series*, vol. 330, No. 4739.

(c) Expresses its appreciation to the Governments whose contributions enabled the technical cooperation and assistance activities, and appeals to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the United Nations Commission on International Trade Law Trust Fund for Symposia and, where appropriate, for the financing of special projects, and otherwise to assist the secretariat of the Commission in carrying out technical cooperation and assistance activities, in particular in developing countries;

(d) Reiterates its appeal to the United Nations Development Programme and other bodies responsible for development assistance, such as the World Bank and regional development banks, as well as to Governments in their bilateral aid programmes, to support the technical cooperation and assistance programme of the Commission and to cooperate and coordinate their activities with those of the Commission, in the light of the relevance and importance of the work and programmes of the Commission for the promotion of the rule of law at the national and international levels and for the implementation of the United Nations development agenda, including the achievement of the Millennium Development Goals;

(e) Welcomes the Commission's request that the Secretariat consider ways of better integrating its technical cooperation and assistance activities in activities conducted on the ground by the United Nations, in particular through the United Nations Development Programme or other country offices of the United Nations;

9. *Appeals* to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the trust fund established to provide travel assistance to developing countries that are members of the Commission, at their request and in consultation with the Secretary-General, in order to enable renewal of the provision of that assistance and to increase expert representation from developing countries at sessions of the Commission and its working groups, necessary to build local expertise and capacities in the field of international trade law in those countries in order to facilitate the development of international trade and the promotion of foreign investment;

10. *Decides*, in order to ensure full participation by all Member States in the sessions of the Commission and its working groups, to continue, in the competent Main Committee during the sixty-fifth session of the General Assembly, its consideration of the granting of travel assistance to the least developed countries that are members of the Commission, at their request and in consultation with the Secretary-General;

11. *Welcomes* the adoption by the Commission of a summary of conclusions on the topic of the Commission's rules of procedure and methods of work,[7] after the comprehensive review of its working methods undertaken by the Commission from its fortieth to forty-second sessions, in the light of the recent increase in membership of the Commission and the number of topics being dealt with by the Commission, and calls upon Member States, non-member States, observer organizations and the Secretariat to apply the rules of procedure and methods of work, with a view to

[7] See *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 305 and annex III.

ensuring the high quality of the work of the Commission and international acceptability of its instruments, and in this regard recalls its previous resolutions related to this matter;

12. *Endorses* the conviction of the Commission that the implementation and effective use of modern private law standards on international trade are essential for advancing good governance, sustained economic development and the eradication of poverty and hunger and that the promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the United Nations to promote the rule of law at the national and international levels, including through the Rule of Law Coordination and Resource Group, supported by the Rule of Law Unit in the Executive Office of the Secretary-General;

13. *Welcomes* the panel discussion on the rule of law in trade and commerce, held during the forty-third session of the Commission, and takes note with appreciation of the opening remarks delivered by the Deputy Secretary-General and statements made by representatives of States and multilateral development banks and by the Director of the United Nations Rule of Law Unit, reiterating the role of the Commission in promoting the rule of law at the national and international levels and the impact of the work of the Commission on economic and social development, including the achievement of the Millennium Development Goals, on the promotion of coordination and coherence of technical assistance and capacity-building in the field of international commercial law and in the context of post-conflict reconstruction;[8]

14. *Takes note* of the decisions taken by the Commission at the end of the panel discussion, and in particular welcomes those improving the integration of the work of the Commission into the United Nations joint rule of law programmes, in particular by raising awareness about the work of the Commission across the United Nations and by promoting regular dialogue between the Commission and the Rule of Law Coordination and Resource Group;[9]

15. *Welcomes* the review by the Commission of the proposed biennial programme plan for subprogramme 5 (Progressive harmonization, modernization and unification of the law of international trade) of programme 6 (Legal affairs) in the context of its consideration of the proposed strategic framework for the period 2012-2013,[10] takes note that the Commission also expressed concern that the resources allotted to the Secretariat under subprogramme 5 were insufficient for it to meet the increased demand from developing countries and countries with economies in transition for technical assistance with law reform in the field of commercial law, and also takes note that the Commission urged the Secretary-General to take steps to ensure that the comparatively small amount of additional resources necessary to meet a demand so crucial to development are made available promptly;[11]

16. *Takes note* of the concern expressed by the Commission over the lack of sufficient resources in its secretariat for responding to the growing need for uniform interpretation of Commission texts, which is considered indispensable for their effective

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[8] Ibid., chap. XVII.

[9] Ibid., paras. 334-336.

[10] A/65/6 (Prog. 6).

[11] See *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 346.

implementation, and that the Commission encouraged the Secretariat to explore various means to address this concern, inter alia, by building partnerships with interested institutions and establishing within the Commission's secretariat a pillar concentrating on the promotion of ways and means of uniform interpretation of Commission texts, in particular by sustaining and expanding the system for the collection and dissemination of case law on Commission texts (the CLOUT system);[12]

17. *Recalls* its resolutions on partnerships between the United Nations and non-State actors, in particular the private sector,[13] and its resolutions in which it encouraged the Commission to further explore different approaches to the use of partnerships with non-State actors in the implementation of its mandate, in particular in the area of technical assistance, in accordance with the applicable principles and guidelines and in cooperation and coordination with other relevant offices of the Secretariat, including the Global Compact Office;[14]

18. *Reiterates its request* to the Secretary-General, in conformity with its resolutions on documentation-related matters,[15] which, in particular, emphasize that any reduction in the length of documents should not adversely affect either the quality of the presentation or the substance of the documents, to bear in mind the particular characteristics of the mandate and work of the Commission in implementing page limits with respect to the documentation of the Commission;

19. *Requests* the Secretary-General to continue providing summary records of the meetings of the Commission, including meetings of committees of the whole established by the Commission for the duration of its annual session, relating to the formulation of normative texts;

20. *Recalls* its resolution in which it approved the establishment of the *Yearbook of the United Nations Commission on International Trade Law*, with the aim of making the work of the Commission more widely known and readily available,[16] expresses its concern regarding the timeliness of the publication of the Yearbook, and requests the Secretary-General to explore options to facilitate the timely publication of the Yearbook;

21. *Stresses* the importance of bringing into effect the conventions emanating from the work of the Commission for the global unification and harmonization of international trade law, and to this end urges States that have not yet done so to consider signing, ratifying or acceding to those conventions;

22. *Welcomes* the preparation of digests of case law relating to the texts of the Commission, such as a digest of case law relating to the United Nations Convention on Contracts for the International Sale of Goods[17] and a digest of case law relating to the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law,[18] with the aim of assisting in the dissemination of information on those texts and promoting their use, enactment and uniform interpretation.

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[12] Ibid., para. 347.

[13] Resolutions 55/215, 56/76, 58/129, 60/215, 62/211 and 64/223.

[14] Resolutions 59/39, 60/20 and 61/32.

[15] Resolutions 52/214, sect. B, 57/283 B, sect. III, and 58/250, sect. III.

[16] See resolution 2502 (XXIV).

[17] United Nations, *Treaty Series*, vol. 1489, No. 25567.

[18] See *Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), annex I; and ibid., *Sixty-first Session, Supplement No. 17* (A/61/17), annex I.

Draft resolution II
UNCITRAL Arbitration Rules as revised in 2010

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, which established the United Nations Commission on International Trade Law with the purpose of furthering the progressive harmonization and unification of the law of international trade in the interests of all peoples, in particular those of developing countries,

Also recalling its resolution 31/98 of 15 December 1976 recommending the use of the Arbitration Rules of the United Nations Commission on International Trade Law,[1]

Recognizing the value of arbitration as a method of settling disputes that may arise in the context of international commercial relations,

Noting that the Arbitration Rules are recognized as a very successful text and are used in a wide variety of circumstances covering a broad range of disputes, including disputes between private commercial parties, investor-State disputes, State-to-State disputes and commercial disputes administered by arbitral institutions, in all parts of the world,

Recognizing the need for revising the Arbitration Rules to conform to current practices in international trade and to meet changes that have taken place over the last thirty years in arbitral practice,

Believing that the Arbitration Rules as revised in 2010 to reflect current practices will significantly enhance the efficiency of arbitration under the Rules,

Convinced that the revision of the Arbitration Rules in a manner that is acceptable to countries with different legal, social and economic systems can significantly contribute to the development of harmonious international economic relations and to the continuous strengthening of the rule of law,

Noting that the preparation of the Arbitration Rules as revised in 2010 was the subject of due deliberation and extensive consultations with Governments and interested circles and that the revised text can be expected to contribute significantly to the establishment of a harmonized legal framework for the fair and efficient settlement of international commercial disputes,

Also noting that the Arbitration Rules as revised in 2010 were adopted by the United Nations Commission on International Trade Law at its forty-third session after due deliberation,[2]

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for having formulated and adopted the revised provisions of the Arbitration Rules, the text of which is contained in an annex to the report of the United Nations Commission on International Trade Law on the work of its forty-third session;[3]

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[1] *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17* (A/31/17), chap. V, sect. C.

[2] Ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17), chap. III.

[3] Ibid., annex I.

2. *Recommends* the use of the Arbitration Rules as revised in 2010 in the settlement of disputes arising in the context of international commercial relations;

3. *Requests* the Secretary-General to make all efforts to ensure that the Arbitration Rules as revised in 2010 become generally known and available.

Draft resolution III
UNCITRAL Legislative Guide on Secured Transactions: Supplement on Security Rights in Intellectual Property

The General Assembly,

Recognizing the importance to all States of efficient secured transactions regimes in promoting access to secured credit,

Recognizing also the need to make secured credit more available and at lower cost to intellectual property owners and other intellectual property right holders, and thus the need to enhance the value of intellectual property rights as security for credit,

Noting that the *UNCITRAL Legislative Guide on Secured Transactions*[1] generally applies to security rights in intellectual property, without inadvertently interfering with the basic rules and objectives of law relating to intellectual property,

Taking into account the need to address the interaction between secured transactions law and law relating to intellectual property at both the national and the international levels,

Recognizing that States would need guidance as to how the recommendations contained in the *UNCITRAL Legislative Guide on Secured Transactions* would apply in an intellectual property context and as to the adjustments that need to be made to their laws to avoid inconsistencies between secured transactions law and law relating to intellectual property,

Noting the importance of balancing the interests of all stakeholders, including grantors, whether they are owners, licensors or licensees of intellectual property, and secured creditors,

Expressing its appreciation to intergovernmental and international non-governmental organizations active in the fields of secured financing and intellectual property, in particular the World Intellectual Property Organization and the Hague Conference on Private International Law, for their participation in and support for the development of the UNCITRAL Legislative Guide on Secured Transactions: Supplement on Security Rights in Intellectual Property,[2]

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for the completion and adoption of the UNCITRAL Legislative Guide on Secured Transactions: Supplement on Security Rights in Intellectual Property;[2]

2. *Requests* the Secretary-General to disseminate broadly, including through electronic means, the text of the Supplement and to transmit it to Governments and other interested bodies;

3. *Recommends* that all States utilize the Supplement to assess the economic efficiency of their intellectual property financing and give favourable consideration

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[1] United Nations publication, Sales No. E.09.V.12.

[2] See *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), chap. IV.

to the Supplement when revising or adopting their relevant legislation, and invites States that have done so to advise the Commission accordingly;

4. *Also recommends* that all States continue to consider becoming parties to the United Nations Convention on the Assignment of Receivables in International Trade[3] and implementing the recommendations contained in the *UNCITRAL Legislative Guide on Secured Transactions*.[1]

[3] Resolution 56/81, annex.

Draft resolution IV
Part three of the UNCITRAL Legislative Guide on Insolvency Law

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with the purpose of furthering the progressive harmonization and unification of the law of international trade in the interests of all peoples, in particular those of developing countries,

Recalling also its resolution 59/40 of 2 December 2004 recommending the use of the *UNCITRAL Legislative Guide on Insolvency Law*,[1]

Recognizing that effective insolvency regimes are increasingly seen as a means of encouraging economic development and investment, as well as fostering entrepreneurial activity and preserving employment,

Noting that because the business of corporations is increasingly conducted, both domestically and internationally, through enterprise groups, the formation of enterprise groups is a feature of the increasingly globalized world economy and thus significant to international trade and commerce,

Recognizing that where the business of an enterprise group fails, it is important not only to know how the group will be treated in insolvency proceedings, but also to ensure that that treatment facilitates, rather than hinders, the fast and efficient conduct of the insolvency proceedings,

Being aware that very few States recognize an enterprise group as a legal entity, except in limited ways for specific purposes, and that very few, if any, have a comprehensive regime for the treatment of enterprise groups in insolvency,

Noting that the *UNCITRAL Legislative Guide on Insolvency Law*, while providing a sound basis for the unification of insolvency law and forming key elements of a modern commercial law framework, does not address the insolvency of enterprise groups,

Appreciating the support for and the participation of international intergovernmental and non-governmental organizations active in the field of insolvency law reform in the development of an additional part of the *UNCITRAL Legislative Guide on Insolvency Law* addressing the treatment of enterprise groups in insolvency,

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for developing and adopting part three of the *UNCITRAL Legislative Guide on Insolvency Law*[1] on the treatment of enterprise groups in insolvency;[2]

2. *Requests* the Secretary-General to transmit the text of part three of the *UNCITRAL Legislative Guide on Insolvency Law* to Governments and other interested bodies;

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[1] United Nations publication, Sales No. E.05.V.10.

[2] See *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), chap. V.

3. *Recommends* that all States utilize the *UNCITRAL Legislative Guide on Insolvency Law* to assess the economic efficiency of their insolvency law regimes and give favourable consideration to the Guide when revising or adopting legislation relevant to insolvency, and invites States that have used the *Guide* to advise the Commission accordingly;

4. *Also recommends* that all States continue to consider implementation of the *UNCITRAL Model Law on Cross-Border Insolvency*;[3]

5. *Further recommends* that the *UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation* continue to be given due consideration by judges, insolvency practitioners and other stakeholders involved in cross-border insolvency proceedings.

[3] United Nations publication, Sales No. E.99.V.3.